

AN ACT
D.C. ACT 22-517

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 13, 2018

To provide a legal framework within which service contracts are to be sold and regulated, to establish that a service contract, except where specified to the contrary, is not insurance as regulated under the Department of Insurance and Securities Regulation Establishment Act of 1996, to add consumer protections in the marketing and sale of service contracts, and to provide an effective means of providing services under service contracts.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Service Contract Regulation Act of 2018".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan or responsible for submissions required by the act.

(2) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking, as established by the Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 *et seq.*) ("DISB act").

(3) "Consumer" means a natural person who buys, other than for purposes of resale, any property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.

(4) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include repair or replacement.

(5) "Motor Vehicle Manufacturer" means a person that:

(A) Manufactures or produces motor vehicles and sells motor vehicles under its own name or label;

(B) Is a wholly owned subsidiary of the person who manufactures or produces motor vehicles;

(C) Is a corporation that owns 100% of the person who manufactures or produces motor vehicles;

(D) Does not manufacture or produce motor vehicles, but sells motor vehicles under the trade name or label of another person who manufactures or produces motor vehicles;

(E) Manufactures or produces motor vehicles and sells such motor vehicles under the trade name or label of another person who manufactures or produces motor vehicles; or

(F) Does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person who manufactures or produces motor vehicles that sells motor vehicles under the licensor's trade name or label.

(6) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(7) "Provider" means a person that is contractually obligated to the service contract holder under the terms of the service contract.

(8) "Provider fee" means the consideration paid for a service contract.

(9) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's non-performance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

(10)(A) "Service contract" means a contract or agreement for a separately stated consideration for any duration to perform the repair, replacement, or maintenance of property or indemnification for service repair, replacement, or maintenance for the operational or structural failure of any motor vehicle or residential or other property due to a defect in materials, workmanship, accidental damage from handling, or normal wear and tear, or to indemnify for the same, including towing, rental, and emergency road service and road hazard protection, and which may provide for the service repair, replacement, or maintenance of property for damage resulting from power surges or interruption. The term "service contract" includes a contract or agreement sold for a separately stated consideration for a specific duration that provides for:

(i) The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented;

(ii) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards, including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scrap;

(iii) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels or sanding, bonding, or painting;

(iv) The repair of chips or cracks in or the replacement of motor vehicle windshields as a result of damage caused by road hazards;

(v) The repair of damage to the interior components of a motor vehicle caused by wear and tear but which expressly excludes the replacement of any part or component of a motor vehicle's interior;

(vi) The replacement of a motor vehicle key or key-fob in the event that the key or key-fob becomes inoperable or is lost or stolen; or

(vii) Other services or products that may be approved by the Commissioner.

(B) The term "service contract" does not include insurance as regulated under the DISB act, except as addressed in section 11.

(11) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(12) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration that is not negotiated or separated from the sale of the product and is incidental to the sale of the product that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or remedial measures, such as repair or replacement of the property or repetition of services.

Sec. 3. Scope.

(a) The following are exempt from this act:

(1) Warranties;

(2) Maintenance agreements;

(3) Warranties, service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the Public Service Commission;

(4) Service contracts sold or offered for sale to persons other than consumers; and

(5) Service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of \$100 or less, exclusive of sales tax.

(b) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products need only comply with sections 4(h)(1), 5(a), 6(d) through (l), 7, and 11, as applicable, of this act. Motor vehicle manufacturers are exempt from the registration requirement of section 4(d).

(c) The types of agreements referred to in this section and service contracts governed pursuant to this act are not insurance.

Sec. 4. Requirements for doing business.

(a) A provider may, but shall not be required to, appoint an administrator or other designee to be responsible for any or all of the administration of service contracts and compliance with this act.

(b) Service contracts shall not be issued, sold, or offered for sale unless the provider has:

(1) Provided a receipt for, or other written evidence of, the purchase of the service contract to the contract holder; and

(2) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(c)(1) A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions before the time of sale upon a request by the consumer.

(2) A provider shall be in compliance with this subsection by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to a website containing a complete sample of the terms and conditions of the service contract.

(d)(1) Each provider of a service contract sold in the District shall:

(A) File a registration with the Commissioner that includes the provider's name, full corporate address, telephone number, and contact person; and

(B) Designate a person in the District for service of process.

(2) A provider shall pay to the Commissioner a fee in the amount of \$200 upon initial registration and every year thereafter.

(3) A provider shall update its registration by written notification to the Commissioner when material changes occur in the registration on file.

(e) To assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with the requirements of one of the following 3 paragraphs:

(1) Insure all service contracts under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to do business in the District, and:

(A) At the time the policy is filed with the Commissioner, and continuously thereafter:

(i) Maintain surplus as to policyholders and paid-in capital of at least \$15 million; and

(ii) Annually file copies of the insurer's financial statements, its National Association of Insurance Commissioners ("NAIC") annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or

(B) At the time the policy is filed with the Commissioner, and continuously thereafter:

(i) Maintain surplus as to policyholders and paid-in capital of less than \$15 million but at least \$10 million;

(ii) Demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to 1; and

(iii) Annually file copies of the insurer's audited financial statements, its NAIC annual statement, and the actuarial certification required by and filed in the insurer's state of domicile;

(2)(A) Maintain a funded reserve account for its obligations under its contracts issued and outstanding in the District; provided, that reserves shall not be less than 40% of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts; provided further, that such funded reserve account shall be subject to examination and review by the Commissioner; and

(B) Place in trust with the Commissioner a financial security deposit, having a value of not less than 5% of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than \$25,000, consisting of one of the following:

(i) A surety bond issued by an authorized surety;

(ii) Securities of the type eligible for deposit by authorized insurers in the District;

(iii) Cash;

(iv) A letter of credit issued by a qualified financial institution; or

(v) Another form of security prescribed by regulation issued by the Mayor or Commissioner; or

(3)(A) Maintain, or together with its parent company maintain, a net worth or stockholders' equity of \$100 million; and

(B)(i) Upon request, provide the Commissioner with a copy of the provider's, or the provider's parent company's, most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission ("SEC") within the last calendar year, or, if the company does not file with the SEC, a copy of the company's audited financial statement that shows a net worth of the provider or its parent company of at least \$100 million.

(ii) If the provider's parent company's Form 10-K, Form 20-F, or audited financial statement is filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in the District.

(f) Except for the requirements specified in subsections (d) and (e) of this section, no other financial security requirements shall be required by the Commissioner for service contract providers.

(g)(1)(A) Service contracts shall require the provider to permit the service contract holder to return the service contract within 30 days of the date the service contract was mailed to the service contract holder, or the date of delivery if the service contract is delivered to the service contract holder at the time of sale, or within a longer time period permitted under the service contract.

(B) Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract shall be void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, with the full purchase price of the service contract.

(C) The right to void the service contract provided by this subsection shall not be transferable and shall apply only to the original service contract purchaser and only if no claim has been made prior to its return to the provider.

(D) A 10% penalty per month shall be added to a refund that is not paid or credited within 45 days after return of the service contract to the provider.

(2)(A) Subsequent to the time period specified in paragraph (1) of this subsection or if a claim has been made under the service contract within that time period, a service contract holder may cancel the service contract and the provider shall refund to the contract holder 100% of the unearned pro rata provider fee, less any claims paid and administrative fee charged, as authorized by subparagraph (B) of this paragraph.

(B) A reasonable administrative fee may be charged by the provider not to exceed 10% of the gross provider fee paid by the service contract holder.

(h)(1) Provider fees collected on service contracts shall not be subject to premium taxes.

(2) Premiums for reimbursement insurance policies shall be subject to applicable taxes.

(i) Except for the registration requirements in subsection (d)(1) of this section, providers and related service contract sellers, administrators, and other persons marketing, selling, or offering to sell service contracts shall be exempt from any licensing requirements of the District.

Sec. 5. Required disclosures – reimbursement insurance policy.

(a) Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale shall state that the insurer that issued the reimbursement insurance policy shall reimburse or pay on behalf of the provider any covered sums the provider is obligated to pay or, in the event of the provider's non-performance, shall provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

(b) If covered service is not provided by the service contract provider within 60 days of proof of loss by the service contract holder, the contract holder shall be entitled to apply directly to the reimbursement insurance company.

Sec. 6. Required disclosure – service contracts.

(a) Service contracts marketed, sold, offered for sale, issued, or made or proposed to be made, or administered in the District shall be written, printed, or typed in eight-point type size, or larger and shall disclose the requirements set forth in this section, as applicable.

(b)(1) Service contracts insured under a reimbursement insurance policy pursuant to section 4(e)(1) shall contain a statement that reads in substantially the following form:

“Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy.”.

(2) The service contract shall also state the name and address of the insurer.

(c) Service contracts not insured under a reimbursement insurance policy pursuant to section 4(e)(1) shall contain a statement that reads in substantially the following form:

“Obligations of the provider under this service contract are backed by the full faith and credit of the provider.”.

(d) Service contracts shall state the name and address of the provider and shall identify the administrator, if different from the provider, the service contract seller, and the service contract holder to the extent that the name of the service contract holder has been furnished by the service contract holder. The identities of these parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(e) Service contracts shall state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.

(f) Service contracts shall state the existence of any deductible amount.

(g) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(h) Service contracts covering motor vehicles shall state whether the use of non-original manufacturers' parts is allowed.

(i) Service contracts shall state any restrictions governing the transferability of the service contract.

(j)(1) Service contracts shall state the terms, restrictions, and conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or the service contract holder.

(2) The provider of the service contract shall mail a written notice to the contract holder at the last known address of the service contract holder contained in the records of the provider at least 5 days before cancellation by the provider; except, that prior notice shall not be required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the service contract holder to the provider, or a substantial breach of duties by the service contract holder relating to the covered product or its use.

(3)(A) The notice required by this subsection shall state the effective date of the cancellation and the reason for the cancellation.

(B) If a service contract is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to the contract holder 100% of the unearned pro rata provider fee, less any claims paid.

(C) A reasonable administrative fee may be charged by the provider not to exceed 10% of the gross provider fee paid by the service contract holder.

(k) Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and any requirement to follow an owner's manual.

(l) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or pre-existing conditions. Service contracts may, but shall not be required to, cover damage resulting from rust, corrosion, or damage caused by a non-covered part or system.

Sec. 7. Prohibited acts.

(a)(1) A provider shall not use in its name the words insurance, casualty, surety, mutual, or any other words descriptive of the insurance, casualty, or surety business, or a name deceptively similar to the name or description of any insurance, casualty, or surety organization, or to the name of any other provider. The word "guaranty" or similar word may be used by a provider.

(2) This section shall not apply to a company that was using any of the prohibited language in its name prior to the applicable date of this act; provided, that a company using the prohibited language in its name shall include in its service contracts a statement that reads in substantially the following form:

"This agreement is not an insurance contract."

(b) A provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement or deliberately omit any material statement that would be considered misleading if omitted.

(c) A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

(d) A motor vehicle service contract provider or its representative shall not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive, or misleading statement with respect to:

(1) The provider's affiliation with a motor vehicle manufacturer;

(2) The provider's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(3) The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or

(4) A requirement that a motor vehicle owner register for a new motor vehicle service contract with the provider in order to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty.

(e)(1) A provider or a seller shall not include an automatic renewal provision within a service contract offered in the District unless the provider or seller:

(A) In the case of in-person or online sales, discloses the terms of the automatic renewal provision in a clear and conspicuous manner in visual proximity to the request for consent to the automatic renewal provision and the consumer consents to the terms of the automatic renewal provision through the consumer's signature or electronic acknowledgment; or

(B) In the case of telephonic sales, on a recorded call, which shall be made available to the Department of Insurance, Securities, and Banking at its request, discloses the terms of the automatic renewal provision in a clear and conspicuous manner in temporal proximity to the request for consent to the automatic renewal provision and the consumer consents to the terms of the automatic renewal provision.

(2) For the purposes of this subsection, "automatic renewal provision" means a provision under which a service contract is renewed for a specified period of more than one month if the renewal causes the service contract to be in effect more than 6 months after the day of the initiation of the service contract and such renewal is effective unless the consumer gives notice to the provider or administrator of the consumer's intention to terminate the service contract.

Sec. 8. Record keeping requirements.

(a) A provider must keep accurate accounts, books, and records concerning transactions regulated under this act and shall include:

(1) A copy of each type of service contract sold;

(2) The name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder;

(3) For automobile or new property retail sales, a list of the locations where service contracts are marketed, sold, or offered for sale; and

(4) Written claims files that shall contain, at a minimum, the dates and description of claims related to the service contracts.

(b) Except as provided in subsection (d) of this section, the provider shall retain all records required to be maintained by this section for at least one year after the specified period of coverage has expired.

(c) The records required under this act may be, but shall not be required to be, maintained on a computer disk or other record-keeping technology; provided, that if the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy at the request of the Commissioner.

(d) A provider discontinuing business in the District shall maintain its records until it furnishes the Commissioner satisfactory proof that it has discharged all obligations to contract holders in the District.

Sec. 9. Cancellation of reimbursement insurance policy.

An insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with section 5 of the Business Transacted with Producer Controlled Insurer Act of 1993, effective October 21, 1993 (D.C. Law 10-52; D.C. Official Code § 31-404), has been mailed or delivered to the Commissioner. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the termination.

Sec. 10. Obligation of reimbursement insurance policy insurers.

(a) Insurers issuing reimbursement insurance to providers are deemed to have received the premiums for the insurance upon the payment of provider fees by consumers for service contracts issued by the insured providers.

(b) This act shall not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the issuer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract.

Sec. 11. Enforcement provisions.

(a) The Commissioner may conduct examinations of providers, administrators, insurers, or other persons to enforce the provisions of this act and protect service contract holders in the District. Upon request of the Commissioner, the provider shall make all accounts, books, and records concerning a service contract sold by the provider available to the Commissioner that the Commissioner considers necessary to enable the Commissioner to reasonably determine compliance or noncompliance with this act.

(b)(1) The Commissioner may take action that is necessary or appropriate to enforce the provisions of this act and regulations and orders issued pursuant to this act, and to protect service contract holders in the District.

(2) If a provider has violated this act or a regulation or order issued pursuant to this act, the Commissioner may issue an order, or any combination of the following, that:

- (A) Orders the provider to cease and desist from committing the violation;
- (B) Prohibits the provider from selling or offering for sale service contracts in violation of this act or a regulation or order issued pursuant to this act; or
- (C) Imposes a civil penalty on the provider.

(c)(1) A person aggrieved by a Commissioner's order issued pursuant to this subsection may request a hearing before the Commissioner; provided, that the request for a hearing shall be filed with the Commissioner within 20 days after the effective date of the Commissioner's order.

(2) If a hearing is timely requested, the order at issue shall be suspended until completion of the hearing and a final decision of the Commissioner.

(3)(A) At the hearing, the burden shall be on the Commissioner to show why the order issued pursuant to this subsection is justified.

(B) The hearing shall be conducted according to the rules established in Subtitle A of Chapter 38 of Title 26 of the District of Columbia Municipal Rules (26 DCMR A3800 *et seq.*).

(d) The Commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief for a violation of this act or a regulation or order issued pursuant to this act. An action filed under this section may also seek restitution on behalf of a person aggrieved by a violation of this act or a regulation or order issued pursuant to this act.

(e)(1) A person who is found to have violated this act or a regulation or order issued pursuant to this act may be assessed a civil penalty in an amount determined by the Commissioner of not more than \$500 per violation and no more than \$10,000 in the aggregate for all violations of a similar nature.

(2) For purposes of this subsection, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice.

Sec. 12. Provider's conditional right to continue doing business.

A person engaged in the service contract business, as a provider or otherwise, in the District on or before the applicability date of this act that submits an application for registration as a provider pursuant to this act within 30 days after the Commissioner makes the application available, may continue to engage in business as a provider in the District until final agency action is taken by the Commissioner regarding the registration application and all rights to administrative judicial review have been exhausted or expired.

Sec. 13. Rules.

The Mayor, pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.

Sec. 14. Applicability.

This act shall apply 180 days after its effective date.


ENROLLED ORIGINAL

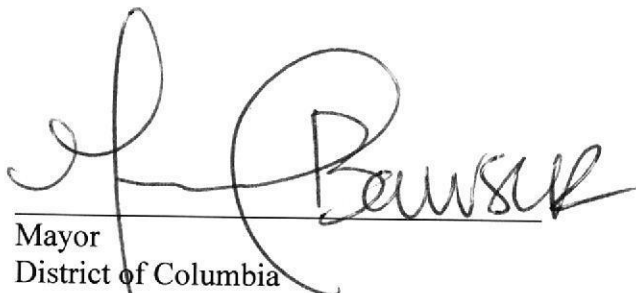
Sec. 15. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 16. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.


Chairman
Council of the District of Columbia


Mayor
District of Columbia
APPROVED
November 13, 2018



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC, 20004

Docket No. **B22-0584**

☐ ITEM ON CONSENT CALENDAR

☒ ACTION & DATE

FIRST READING, Oct 2, 2018

☒ VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

☐ ROLL CALL VOTE - Result

| Council Member | Aye | Nay | NV | AB | Council Member | Aye | Nay | NV | AB | Council Member | Aye | Nay | NV | AB |
|--------------------------|-----|-----|----|----|--------------------|-----|-----|----|----|---------------------------------|-----|-----|----|----|
| Chmn. Mendelson | X | | | | Gray | X | | | | Silverman | X | | | |
| Allen | X | | | | Grosso | X | | | | T. White | X | | | |
| Bonds | X | | | | McDuffie | X | | | | Todd | X | | | |
| Cheh | X | | | | Nadeau | X | | | | | | | | |
| Evans | X | | | | R. White | X | | | | | | | | |
| X - Indicate Vote | | | | | AB - Absent | | | | | NV - Present, Not Voting | | | | |

CERTIFICATION RECORD

Secretary to the Council

10-22-18

Date

Docket No. **B22-0584**

☐ ITEM ON CONSENT CALENDAR

☒ ACTION & DATE

FINAL READING, Oct 16, 2018

☒ VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

☐ ROLL CALL VOTE - Result

| Council Member | Aye | Nay | NV | AB | Council Member | Aye | Nay | NV | AB | Council Member | Aye | Nay | NV | AB |
|--------------------------|-----|-----|----|----|--------------------|-----|-----|----|----|---------------------------------|-----|-----|----|----|
| Chmn. Mendelson | X | | | | Gray | X | | | | Silverman | X | | | |
| Allen | X | | | | Grosso | X | | | | T. White | X | | | |
| Bonds | X | | | | McDuffie | X | | | | Todd | X | | | |
| Cheh | X | | | | Nadeau | X | | | | | | | | |
| Evans | X | | | | R. White | X | | | | | | | | |
| X - Indicate Vote | | | | | AB - Absent | | | | | NV - Present, Not Voting | | | | |

CERTIFICATION RECORD

Secretary to the Council

10-22-18

Date